

Senate Study Bill 1109

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON ANGELO)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to business entities, based on revisions related
2 to the Iowa business corporation Act, including addition of a
3 savings clause and addition of provisions related to director
4 and officer liability, duty, and indemnification for certain
5 insurance companies and indemnification for cooperative
6 associations.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

8 TLSB 1407SC 80

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1 1 Section 1. Section 490.1701, Code 2003, is amended by
1 2 adding the following new unnumbered paragraph:
1 3 NEW UNNUMBERED PARAGRAPH. A corporation organized under
1 4 chapter 496C may voluntarily elect to adopt the provisions of
1 5 this chapter by complying with the provisions prescribed by
1 6 subsection 3.

1 7 Sec. 2. Section 490.1701, subsection 3, paragraph b, Code
1 8 2003, is amended to read as follows:

1 9 b. The instrument shall be delivered to the secretary of
1 10 state for filing and recording in the secretary of state's
1 11 office, ~~and. If the corporation was organized under chapter~~
1 12 ~~176, 524, or 533, the instrument shall also be filed and~~

1 13 recorded in the office of the county recorder. The
1 14 corporation shall at the time it files the instrument with the
1 15 secretary of state deliver also to the secretary of state for
1 16 filing in the secretary of state's office any biennial report
1 17 which is then due.

1 18 If the county of the initial registered office as stated in
1 19 the instrument ~~for a corporation organized under chapter 176,~~
1 20 ~~524, or 533~~ is one which is other than the county where the

1 21 principal place of business of the corporation, as designated
1 22 in its articles of incorporation, was located, the corporation
1 23 shall forward to the county recorder of the county in which
1 24 the principal place of business of the corporation was located
1 25 a copy of the instrument and the corporation shall forward to
1 26 the recorder of the county in which the initial registered
1 27 office of the corporation is located, in addition to a copy of
1 28 the original instrument, a copy of the articles of

1 29 incorporation of the corporation together with all amendments
1 30 to them as then on file in the secretary of state's office.
1 31 The corporation shall, through an officer or director, certify
1 32 to the secretary of state that a copy has been sent to each
1 33 applicable county recorder, including the date each copy was
1 34 sent.

1 35 Sec. 3. Section 490.1703, subsection 1, Code 2003, is
2 1 amended to read as follows:

2 2 1. Except as provided in subsection 2, the repeal of a
2 3 statute by 1989 Iowa Acts, chapter 288, ~~and the amendment or~~
2 4 ~~repeal of a statute by 2002 Iowa Acts, chapter 1154,~~ does not
2 5 affect:

2 6 a. The operation of the statute or any action taken under
2 7 it before its ~~amendment or~~ repeal.

2 8 b. Any ratification, right, remedy, privilege, obligation,
2 9 or liability acquired, accrued, or incurred under the statute
2 10 before its ~~amendment or~~ repeal.

2 11 c. Any violation of the statute, or any penalty,
2 12 forfeiture, or punishment incurred because of the violation,
2 13 before its ~~amendment or~~ repeal.

2 14 d. Any proceeding, reorganization, or dissolution
2 15 commenced under the statute before its ~~amendment or~~ repeal,
2 16 and the proceeding, reorganization, or dissolution may be
2 17 completed in accordance with the statute as if it had not been
2 18 ~~amended or~~ repealed.

2 19 Sec. 4. Section 491.5, subsection 8, Code 2003, is amended
2 20 by striking the subsection and inserting in lieu thereof the
2 21 following:

2 22 8. Any provision eliminating or limiting the personal
2 23 liability of a director to the corporation or its shareholders
2 24 or members for money damages as provided in section 490.202,
2 25 subsection 2, paragraph "d", except that section 490.202,
2 26 subsection 2, paragraph "d", subparagraph (3), shall have no
2 27 application.

2 28 Sec. 5. Section 491.5, Code 2003, is amended by adding the
2 29 following new subsection:

2 30 NEW SUBSECTION. 9. Any provision permitting or making
2 31 obligatory indemnification of a director as provided in
2 32 section 490.202, subsection 2, paragraph "e", except that
2 33 section 490.202, subsection 2, paragraph "e", subparagraph
2 34 (3), shall have no application.

2 35 Sec. 6. NEW SECTION. 491.16A DIRECTORS AND OFFICERS ==
3 1 DUTIES AND LIABILITIES.

3 2 Sections 490.830 through 490.842 apply to corporations
3 3 organized under or subject to this chapter.

3 4 Sec. 7. Section 496C.14, unnumbered paragraph 7, Code
3 5 2003, is amended to read as follows:

3 6 Notwithstanding the foregoing provisions of this section,
3 7 purchase by the corporation is not required upon the
3 8 occurrence of any event other than death of a shareholder if
3 9 the corporation is dissolved or voluntarily elects to adopt
3 10 the provisions of the Iowa business corporation Act, as
3 11 provided in section 490.1701, subsection 2, within sixty days
3 12 after the occurrence of the event. The articles of
3 13 incorporation or bylaws may provide that purchase is not
3 14 required upon the death of a shareholder if the corporation is
3 15 dissolved within sixty days after the death. Notwithstanding
3 16 the foregoing provisions of this section, purchase by the
3 17 corporation is not required upon the death of a shareholder,
3 18 if the corporation voluntarily elects to adopt the provisions
3 19 of the Iowa business corporation Act, as provided in section
3 20 490.1701, subsection 2, within sixty days after death.

3 21 Sec. 8. Section 496C.16, Code 2003, is amended to read as
3 22 follows:

3 23 496C.16 MANAGEMENT.

3 24 All directors of a professional corporation and all
3 25 officers of a professional corporation except assistant
3 26 officers, shall at all times be individuals who are licensed
3 27 to practice in this state a profession which the corporation
3 28 is authorized to practice. ~~No person who is not licensed~~
3 29 ~~shall have any authority or duties in the management or~~
3 30 ~~control of the corporation. If any director or any officer~~
3 31 ~~ceases to have this qualification, the director or officer~~
3 32 ~~shall immediately and automatically cease to hold the~~
3 33 ~~directorship or office. However, upon the occurrence of any~~
3 34 ~~event that requires the corporation either to be dissolved or~~
3 35 ~~to elect to adopt the provisions of the Iowa business~~
4 1 corporation Act, as provided in section 496C.19, provided the
4 2 corporation ceases to practice the profession that the
4 3 corporation is authorized to practice, as provided in section
4 4 496C.19, then individuals who are not licensed to practice in
4 5 this state a profession that the corporation is authorized to
4 6 practice may be appointed as officers and directors for the
4 7 sole purpose of carrying out the dissolution of the
4 8 corporation or, if applicable, the voluntary election of the
4 9 corporation to adopt the provisions of the Iowa business
4 10 corporation Act, as provided in section 496C.19.

4 11 Sec. 9. Section 496C.19, Code 2003, is amended to read as
4 12 follows:

4 13 496C.19 DISSOLUTION OR LIQUIDATION.

4 14 Violation of any provision of this chapter by a
4 15 professional corporation or any of its shareholders,
4 16 directors, or officers shall be cause for its involuntary
4 17 dissolution, or liquidation of its assets and business by the
4 18 district court, as provided in the Iowa business corporation
4 19 Act, chapter 490. Upon the death of the last remaining
4 20 shareholder of a professional corporation, or whenever the
4 21 last remaining shareholder is not licensed or ceases to be
4 22 licensed to practice in this state a profession which the
4 23 corporation is authorized to practice, or whenever any person
4 24 other than the shareholder of record becomes entitled to have
4 25 all shares of the last remaining shareholder of the
4 26 corporation transferred into that person's name or to exercise
4 27 voting rights, except as a proxy, with respect to such shares,
4 28 the corporation shall not practice any profession and it shall
4 29 either be promptly dissolved or shall promptly elect to adopt

4 30 the provisions of the Iowa business corporation Act, as
4 31 provided in section 490.1701, subsection 2. However, if prior
4 32 to such dissolution all outstanding shares of the corporation
4 33 are acquired by one or more persons licensed to practice in
4 34 this state a profession which the corporation is authorized to
4 35 practice, the corporation need not be dissolved and may

5 1 practice the profession as provided in this chapter.
5 2 Sec. 10. Section 497.33, Code 2003, is amended to read as
5 3 follows:

5 4 497.33 PERSONAL LIABILITY.

5 5 Except as otherwise provided in this chapter, a director,
5 6 officer, employee, or member of the corporation is not liable
5 7 on the corporation's debts or obligations and a director,
5 8 officer, member, or other volunteer is not personally liable
5 9 in that capacity, for a claim based upon ~~an act or omission of~~
~~the person performed any action taken, or any failure to take~~
5 11 ~~action~~ in the discharge of the person's duties, except for a
5 12 ~~breach of the duty of loyalty to the corporation, for acts or~~
5 13 ~~omissions not in good faith or which involve the amount of a~~
5 14 ~~financial benefit received by the person to which the person~~
5 15 ~~is not entitled, an intentional infliction of harm on the~~
5 16 ~~association or its members, or an intentional misconduct or~~
5 17 ~~knowing violation of the criminal law, or for a transaction~~
5 18 ~~from which the person derives an improper personal benefit.~~

5 19 Sec. 11. Section 498.35, Code 2003, is amended to read as
5 20 follows:

5 21 498.35 PERSONAL LIABILITY.

5 22 Except as otherwise provided in this chapter, a director,
5 23 officer, employee, or member of the association is not liable
5 24 on the association's debts or obligations and a director,
5 25 officer, member, or other volunteer is not personally liable
5 26 in that capacity, for a claim based upon ~~an act or omission of~~
~~the person performed any action taken, or any failure to take~~
5 28 ~~action~~ in the discharge of the person's duties, except for a
5 29 ~~breach of the duty of loyalty to the association, for acts or~~
5 30 ~~omissions not in good faith or which involve the amount of a~~
5 31 ~~financial benefit received by the person to which the person~~
5 32 ~~is not entitled, an intentional infliction of harm on the~~
5 33 ~~association or its members, or an intentional misconduct or~~
5 34 ~~knowing violation of the criminal law, or for a transaction~~
5 35 ~~from which the person derives an improper personal benefit.~~

6 1 Sec. 12. Section 499.59, Code 2003, is amended to read as
6 2 follows:

6 3 499.59 PERSONAL LIABILITY.

6 4 Except as otherwise provided in this chapter, a director,
6 5 officer, employee, or member of the association is not liable
6 6 on the association's debts or obligations, and a director,
6 7 officer, member, or other volunteer is not personally liable
6 8 in that capacity, for a claim based upon ~~an act or omission of~~
~~the person performed any action taken, or any failure to take~~
6 10 ~~action~~ in the discharge of the person's duties, except for a
6 11 ~~breach of the duty of loyalty to the association, for acts or~~
6 12 ~~omissions not in good faith or which involve the amount of a~~
6 13 ~~financial benefit received by the person to which the person~~
6 14 ~~is not entitled, an intentional infliction of harm on the~~
6 15 ~~association or its members, or an intentional misconduct or~~
6 16 ~~knowing violation of the criminal law, or for a transaction~~
6 17 ~~from which the person derives an improper personal benefit.~~

6 18 Sec. 13. Section 501.407, Code 2003, is amended to read as
6 19 follows:

6 20 501.407 PERSONAL LIABILITY == INDEMNIFICATION.

6 21 1. The articles may contain a provision eliminating or
6 22 limiting the personal liability of a director, officer, or
6 23 interest holder of the cooperative for ~~monetary~~ money damages
6 24 for ~~breach of a fiduciary duty any action taken, or any~~
6 25 ~~failure to take action~~ as a director, officer, or interest
6 26 holder, provided that the provision does not eliminate or
6 27 limit ~~except~~ liability for any of the following:

6 28 1. a. ~~A breach of the duty of loyalty to the cooperative~~
6 29 ~~or its interest holders~~ An intentional infliction of harm on
6 30 the cooperative or its members.

6 31 2. b. ~~An act or omission not in good faith or which~~
6 32 ~~involves intentional misconduct or a knowing~~ A violation of
6 33 criminal law.

6 34 3. c. ~~A transaction from which the director, officer, or~~
6 35 ~~interest holder derives an improper personal benefit~~ The
7 1 amount of a financial benefit received by the person to which
7 2 the person is not entitled.

7 3 4. d. ~~An act or omission occurring prior to the date when~~
7 4 ~~the provision in the articles becomes effective.~~

7 5 2. The articles may contain a provision permitting or

7 6 making obligatory indemnification of a director for liability,
7 7 as defined in section 501.411, to any person for any action
7 8 taken, or any failure to take any action, as a director,
7 9 except liability for any of the following:

7 10 a. Receipt of a financial benefit to which the person is
7 11 not entitled.

7 12 b. An intentional infliction of harm on the corporation or
7 13 its shareholders.

7 14 c. An intentional violation of criminal law.

7 15 Sec. 14. Section 501.411, Code 2003, is amended to read as
7 16 follows:

7 17 501.411 DEFINITIONS.

7 18 As used in this part, unless the context otherwise
7 19 requires:

7 20 1. "Cooperative" includes any domestic or foreign
7 21 predecessor entity of a cooperative ~~in a merger or other~~
7 22 ~~transaction in which the predecessor's existence ceased upon~~
7 23 ~~consummation of the transaction.~~

7 24 2. "Director" ~~or "officer"~~ means an individual who is or
7 25 was a director ~~or officer, respectively,~~ of a cooperative ~~or~~
7 26 ~~an individual~~ who, while a director ~~or officer~~ of a ~~the~~
7 27 cooperative, is or was serving at the cooperative's request as
7 28 a director, officer, partner, trustee, employee, or agent of
7 29 another ~~foreign or domestic or foreign~~ cooperative,
7 30 corporation, partnership, joint venture, trust, employee
7 31 benefit plan, or other ~~enterprise~~ entity. A director ~~or~~
7 32 ~~officer~~ is considered to be serving an employee benefit plan

7 33 at the cooperative's request if the director's ~~or officer's~~
7 34 duties to the cooperative also impose duties on, or otherwise
7 35 involve services by, that director ~~or officer~~ to the plan or
8 1 to participants in or beneficiaries of the plan. "Director"

8 2 ~~or "officer"~~ includes, unless the context requires otherwise,
8 3 the estate or personal representative of a director ~~or~~
8 4 ~~officer.~~

8 5 3. "Disinterested director" means a director who at the
8 6 time of a vote referred to in section 501.414, subsection 3,
8 7 or a vote or selection referred to in section 501.416,
8 8 subsection 2 or 3, is not either of the following:

8 9 a. A party to the proceeding.

8 10 b. An individual having a familial, financial,
8 11 professional, or employment relationship with the director
8 12 whose indemnification or advance for expenses is the subject
8 13 of the decision being made, which relationship would in the
8 14 circumstances, reasonably be expected to exert an influence on
8 15 the director's judgment when voting on the decision being
8 16 made.

8 17 ~~3- 4.~~ "Expenses" includes counsel fees.

8 18 ~~4- 5.~~ "Liability" means the obligation to pay a judgment,
8 19 settlement, penalty, fine, including an excise tax assessed
8 20 with respect to an employee benefit plan, or reasonable
8 21 expenses incurred with respect to a proceeding.

8 22 ~~5- 6.~~ "Official capacity" means:

8 23 a. When used with respect to a director, the office of
8 24 director in a cooperative.

8 25 b. When used with respect to an ~~individual other than a~~
8 26 ~~director officer,~~ as contemplated in section 501.417, the
8 27 office in a cooperative held by the officer ~~or the employment~~
8 28 ~~or agency relationship undertaken by the employee or agent on~~
8 29 ~~behalf of the cooperative.~~

8 30 "Official capacity" does not include service for any other
8 31 ~~foreign or domestic or foreign~~ cooperative or any corporation,
8 32 partnership, joint venture, trust, employee benefit plan, or
8 33 other ~~enterprise~~ entity.

8 34 ~~6- 7.~~ "Party" ~~includes~~ means an individual who was, is, or
8 35 is threatened to be made a ~~named~~ defendant or respondent in a
9 1 proceeding.

9 2 ~~7- 8.~~ "Proceeding" means any threatened, pending, or
9 3 completed action, suit, or proceeding, whether civil,
9 4 criminal, administrative, or investigative and whether formal
9 5 or informal.

9 6 Sec. 15. Section 501.412, Code 2003, is amended to read as
9 7 follows:

9 8 501.412 ~~AUTHORITY TO INDEMNIFY~~ PERMISSIBLE

9 9 INDEMNIFICATION.

9 10 1. a. Except as otherwise provided in ~~subsection 4 this~~
9 11 ~~section,~~ a cooperative may indemnify an individual ~~made~~ who is
9 12 a party to a proceeding because the individual is ~~or was~~ a
9 13 director against liability incurred in the proceeding if ~~all~~
9 14 ~~either~~ of the following ~~apply~~ applies in full:

9 15 a- (1) The individual acted in good faith.

9 16 b- (2) The individual reasonably believed ~~either~~ all of

9 17 the following:

9 18 ~~(1) (a)~~ In the case of conduct in the individual's
9 19 official capacity ~~with the cooperative~~, that the individual's
9 20 conduct was in the ~~cooperative's~~ best interests of the
9 21 cooperative.

9 22 ~~(2) (b)~~ In all other cases, that the individual's conduct
9 23 was at least not opposed to the ~~cooperative's~~ best interests
9 24 of the cooperative.

9 25 ~~c-~~ (c) In the case of any criminal proceeding, the
9 26 individual had no reasonable cause to believe the individual's
9 27 conduct was unlawful.

9 28 b. The individual engaged in conduct for which broader
9 29 indemnification has been made permissible or obligatory under
9 30 a provision of the articles of organization as authorized by
9 31 section 501.407, subsection 2.

9 32 2. A director's conduct with respect to an employee
9 33 benefit plan for a purpose the director reasonably believed to
9 34 be in the interests of the participants in and beneficiaries
9 35 of the plan is conduct that satisfies the requirement of
10 1 subsection 1, paragraph "b" "a", subparagraph (2).
10 2 subparagraph subdivision (b).

10 3 3. The termination of a proceeding by judgment, order,
10 4 settlement, conviction, or upon a plea of nolo contendere or
10 5 its equivalent is not, of itself, determinative that the
10 6 director did not meet the relevant standard of conduct
10 7 described in this section.

10 8 4. Unless ordered by a court pursuant to section
10 9 501.415, subsection 1, paragraph "c", a cooperative shall not
10 10 indemnify a director under this section in either of the
10 11 following circumstances:

10 12 a. In connection with a proceeding by or in the right of
10 13 the cooperative, ~~in which the director was adjudged liable to~~
10 14 ~~the cooperative except for reasonable expenses incurred in~~
10 15 ~~connection with the proceeding if it is determined that the~~
10 16 ~~director has met the relevant standard of conduct under~~
10 17 ~~subsection 1, paragraph "a".~~

10 18 b. In connection with any ~~other~~ proceeding ~~charging~~
10 19 ~~improper personal benefit to the director, whether or not~~
10 20 ~~involving action in the director's official capacity, in with~~
10 21 ~~respect to conduct for which the director was adjudged liable~~
10 22 ~~on the basis that personal the director received a financial~~
10 23 ~~benefit was improperly received by the director to which the~~
10 24 ~~director was not entitled, whether or not involving action in~~
10 25 ~~the director's official capacity.~~

10 26 5. ~~Indemnification permitted under this section in~~
10 27 ~~connection with a proceeding by or in the right of the~~
10 28 ~~cooperative is limited to reasonable expenses incurred in~~
10 29 ~~connection with the proceeding.~~

10 30 Sec. 16. Section 501.413, Code 2003, is amended to read as
10 31 follows:

10 32 501.413 MANDATORY INDEMNIFICATION.

10 33 ~~Unless limited by its articles of association, a A~~
10 34 ~~cooperative shall indemnify a director who against reasonable~~
10 35 ~~expenses incurred by the director in connection with the~~
11 1 ~~proceeding in which the director was wholly successful, on the~~
11 2 ~~merits or otherwise, in the defense of any proceeding to which~~
11 3 ~~the director was a party because the director is or was a~~
11 4 ~~director of the cooperative against reasonable expenses~~
11 5 ~~incurred by the director in connection with the proceeding.~~

11 6 Sec. 17. Section 501.414, Code 2003, is amended to read as
11 7 follows:

11 8 501.414 ADVANCE FOR EXPENSES.

11 9 1. A cooperative may, before final disposition of a
11 10 proceeding, advance funds to pay for or reimburse the
11 11 reasonable expenses incurred by a director who is a party to a
11 12 proceeding in advance of final disposition of the proceeding
11 13 because the person is a director if any of the person delivers
11 14 all of the following applies to the cooperative:

11 15 a. ~~The director furnishes the cooperative a A~~ written
11 16 ~~affirmation of the director's good faith belief that either~~
11 17 ~~the director has met the relevant standard of conduct~~
11 18 ~~described in section 501.412 or that the proceeding involves~~
11 19 ~~conduct for which liability has been eliminated under a~~
11 20 ~~provision of the articles of organization as authorized by~~
11 21 ~~section 501.407, subsection 1.~~

11 22 b. ~~The director furnishes the cooperative a director's~~
11 23 ~~written undertaking, executed personally or on the director's~~
11 24 ~~behalf, to repay the advance if any funds advanced if the~~
11 25 ~~director is not entitled to mandatory indemnification under~~
11 26 ~~section 501.413 and it is ultimately determined that the~~
11 27 ~~director did not meet the has not met the relevant standard of~~

11 28 conduct described in section 501.412.

11 29 c. ~~A determination is made pursuant to section 501.416~~
~~11 30 that the facts then known to those making the determination~~
~~11 31 would not preclude indemnification under this part.~~

11 32 2. The undertaking required by subsection 1, paragraph
11 33 "b", must be an unlimited general obligation of the director
11 34 but need not be secured and may be accepted without reference
11 35 to the financial ability of the director to make repayment.

12 1 3. ~~Determinations and authorizations of payments~~
12 2 ~~Authorizations~~ under this section shall be made in the manner
12 3 ~~specified in section 501.416. according to either of the~~
12 4 ~~following:~~

12 5 a. By the board of directors, according to one of the
12 6 following:

12 7 (1) ~~TWO OR MORE DISINTERESTED DIRECTORS.~~ By a majority
12 8 vote of all the disinterested directors, a majority of whom
12 9 shall for such purpose constitute a quorum, or by a majority
12 10 of the members of a committee of two or more disinterested
12 11 directors appointed by such a vote.

12 12 (2) ~~FEWER THAN TWO DISINTERESTED DIRECTORS.~~ If a quorum
12 13 is present when the vote is taken, by the affirmative vote of
12 14 a majority of the directors present, unless the articles or
12 15 bylaws require the vote of a greater number of directors, in
12 16 which authorization directors who do not qualify as
12 17 disinterested directors may participate.

12 18 b. By the members, but voting interests owned by or voted
12 19 under the control of a director who at the time does not
12 20 qualify as a disinterested director shall not be voted on the
12 21 authorization.

12 22 Sec. 18. Section 501.415, Code 2003, is amended to read as
12 23 follows:

12 24 501.415 COURT=ORDERED INDEMNIFICATION.

12 25 1. ~~Unless a cooperative's articles of association provide~~
~~12 26 otherwise, a A director of the cooperative who is a party to a~~
12 27 proceeding because the person is a director may apply for
12 28 indemnification to the court conducting the proceeding or to
12 29 another court of competent jurisdiction for indemnification or
12 30 an advance for expenses. ~~On~~ After receipt of an application,
12 31 the court and after giving any notice the court considers
12 32 necessary may order, the court shall proceed according to the
12 33 following:

12 34 a. Order indemnification if ~~it~~ the court determines either
12 35 of the following: that the

13 1 1. The director is entitled to mandatory indemnification
13 2 under section 501.413, in which case the court shall also
13 3 order the cooperative to pay the director's reasonable
13 4 expenses incurred to obtain court-ordered indemnification.

13 5 2. The director is fairly and reasonably entitled to
13 6 indemnification in view of all the relevant circumstances,
13 7 whether or not the director met the standard of conduct set
13 8 forth in section 501.412 or was adjudged liable as described
13 9 in section 501.412, subsection 4, but if the director was
13 10 adjudged so liable the director's indemnification is limited
13 11 to reasonable expenses incurred.

13 12 b. Order indemnification or advance for expenses if the
13 13 court determines that the director is entitled to
13 14 indemnification or advance for expenses pursuant to a
13 15 provision authorized by section 501.419, subsection 1.

13 16 c. Order indemnification or advance for expenses if the
13 17 court determines, in view of all the relevant circumstances,
13 18 that it is fair and reasonable to do one of the following:

13 19 (1) To indemnify the director.

13 20 (2) To advance expenses to the director, even if the
13 21 director has not met the relevant standard of conduct set
13 22 forth in section 501.412, subsection 1, failed to comply with
13 23 section 501.414, or was adjudged liable in a proceeding
13 24 referred to in subsection 501.412, subsection 4, paragraph "a"
13 25 or "b", but if the director was adjudged so liable the
13 26 director's indemnification shall be limited to reasonable
13 27 expenses incurred in connection with the proceeding.

13 28 2. If the court determines that the director is entitled
13 29 to indemnification under subsection 1, paragraph "a", or to
13 30 indemnification or advance for expenses under subsection 1,
13 31 paragraph "b", the court shall also order the cooperative to
13 32 pay the director's reasonable expenses incurred in connection
13 33 with obtaining court=ordered indemnification or advance for
13 34 expenses. If the court determines that the director is
13 35 entitled to indemnification or advance for expenses under
14 1 subsection 1, paragraph "c", the court may also order the
14 2 cooperative to pay the director's reasonable expenses to
14 3 obtain court=ordered indemnification or advance for expenses.

14 4 Sec. 19. Section 501.416, Code 2003, is amended to read as
14 5 follows:

14 6 501.416 DETERMINATION AND AUTHORIZATION OF
14 7 INDEMNIFICATION.

14 8 1. A cooperative shall not indemnify a director under
14 9 section 501.412 unless authorized ~~in the for a specific case~~
14 10 ~~proceeding~~ after a determination has been made that
14 11 indemnification of the director is permissible ~~in the~~
14 12 ~~circumstances~~ because the director has met the relevant
14 13 standard of conduct set forth in section 501.412.

14 14 2. The determination shall be made by ~~any one~~ of the
14 15 following:

14 16 a. ~~By the board of directors by majority vote of a quorum~~
14 17 ~~consisting of directors not at the time parties to the~~
14 18 ~~proceeding. If there are two or more disinterested directors,~~
14 19 ~~by the board of directors by a majority vote of all the~~
14 20 ~~disinterested directors, a majority of whom shall for such~~
14 21 ~~purpose constitute a quorum, or by a majority of the members~~
14 22 ~~of a committee of two or more disinterested directors~~
14 23 ~~appointed by such a vote.~~

14 24 b. ~~If a quorum cannot be obtained under paragraph "a", by~~
14 25 ~~majority vote of a committee duly designated by the board of~~
14 26 ~~directors, in which designation directors who are parties may~~
14 27 ~~participate, consisting solely of two or more directors not at~~
14 28 ~~the time parties to the proceeding.~~

14 29 c. ~~b.~~ By special legal counsel.

14 30 (1) The special legal counsel shall be selected ~~by the~~
14 31 ~~board of directors or its committee~~ in the manner prescribed
14 32 described in paragraph "a" ~~or "b"~~.

14 33 (2) ~~If a quorum of the board of there are fewer than two~~
14 34 ~~disinterested directors cannot be obtained under paragraph "a"~~
14 35 ~~and a committee cannot be designated under paragraph "b", the~~
15 1 special legal counsel shall be selected by ~~majority vote of~~
15 2 ~~the full board of directors, in which selection directors who~~
15 3 ~~are parties do not qualify as disinterested directors may~~
15 4 ~~participate.~~

15 5 d. ~~c.~~ By the members, but voting interests owned by or
15 6 voted under the control of ~~directors~~ a director who ~~are~~ at the
15 7 ~~time parties to the proceeding does not qualify as a~~
15 8 ~~disinterested director~~ shall not be voted on the
15 9 determination.

15 10 3. Authorization of indemnification ~~and evaluation as to~~
15 11 ~~reasonableness of expenses~~ shall be made in the same manner as
15 12 the determination that indemnification is permissible, except
15 13 that if there are fewer than two disinterested directors or if
15 14 the determination is made by special legal counsel,
15 15 authorization of indemnification ~~and evaluation as to~~
15 16 ~~reasonableness of expenses~~ shall be made by those entitled
15 17 under subsection 2, paragraph "~~c~~" "b", to select special legal
15 18 counsel.

15 19 Sec. 20. Section 501.417, Code 2003, is amended to read as
15 20 follows:

15 21 501.417 INDEMNIFICATION OF OFFICERS, ~~EMPLOYEES, AND~~
15 22 ~~AGENTS~~.

15 23 ~~Unless a cooperative's articles of association provide~~
15 24 ~~otherwise, all of the following apply:~~

15 25 1. ~~An officer of the cooperative who is not a director is~~
15 26 ~~entitled to mandatory indemnification under section 501.413,~~
15 27 ~~and is entitled to apply for court-ordered indemnification~~
15 28 ~~under section 501.415, in each case to the same extent as a~~
15 29 ~~director.~~

15 30 2. ~~1.~~ The A cooperative may indemnify and advance expenses
15 31 under this part to an officer, ~~employee, or agent~~ of the
15 32 cooperative who is ~~not a director to a party to the proceeding~~
15 33 ~~because the person is an officer, according to both of the~~
15 34 following:

15 35 a. To the same extent as to a director.

16 1 3. ~~b.~~ A cooperative may also indemnify and advance
16 2 expenses to an officer, employee, or agent who is not a
16 3 director to the extent consistent with law that If the person
16 4 is an officer but not a director, to such further extent as
16 5 may be provided by ~~its~~ the articles of association, the
16 6 bylaws, ~~general or specific action~~ a resolution of its the
16 7 board of directors, or contract, ~~except for either of the~~
16 8 following:

16 9 (1) Liability in connection with a proceeding by or in the
16 10 right of the cooperative other than for reasonable expenses
16 11 incurred in connection with the proceeding.

16 12 (2) Liability arising out of conduct that constitutes any
16 13 of the following:

16 14 (a) Receipt by the officer of a financial benefit to which

16 15 the officer is not entitled.

16 16 (b) An intentional infliction of harm on the cooperative
16 17 or the interest holders.

16 18 (c) An intentional violation of criminal law.

16 19 2. The provisions of subsection 1, paragraph "b", shall
16 20 apply to an officer who is also a director if the basis on
16 21 which the officer is made a party to a proceeding is an act or
16 22 omission solely as an officer.

16 23 3. An officer of a cooperative who is not a director is
16 24 entitled to mandatory indemnification under section 501.413,
16 25 and may apply to a court under section 501.415 for
16 26 indemnification or an advance for expenses, in each case to
16 27 the same extent to which a director may be entitled to
16 28 indemnification or an advance for expenses under those
16 29 provisions.

16 30 Sec. 21. Section 501.418, Code 2003, is amended to read as
16 31 follows:

16 32 501.418 INSURANCE.

16 33 A cooperative may purchase and maintain insurance on behalf
16 34 of an individual who is ~~or was~~ a director, ~~or officer,~~
16 35 ~~employee, or agent~~ of the cooperative, or who, while a
17 1 director, ~~or officer, employee, or agent~~ of the cooperative,
17 2 ~~is or was serving~~ serves as the request of the cooperative
17 3 cooperative's request as a director, officer, partner,
17 4 trustee, employee, or agent of another ~~foreign or domestic or~~
17 5 ~~foreign~~ cooperative, corporation, partnership, joint venture,
17 6 trust, employee benefit plan, or other ~~enterprise~~ entity,
17 7 against liability asserted against or incurred by that
17 8 individual in that capacity or arising from the individual's
17 9 status as a director, ~~or officer, employee, or agent,~~ whether
17 10 or not the cooperative would have power to indemnify ~~or~~
17 11 advance expenses to that individual against the same liability
17 12 under ~~section 501.412 or 501.413~~ this part.

17 13 Sec. 22. Section 501.419, Code 2003, is amended to read as
17 14 follows:

17 15 501.419 VARIATION BY CORPORATE ACTION -- APPLICATION OF
17 16 THIS PART.

17 17 Except as limited in section 501.412, subsection 4,
17 18 ~~paragraph "a", and subsection 5 with respect to proceedings by~~
17 19 ~~or in the right of the cooperative, the indemnification and~~
17 20 ~~advancement of expenses provided by, or granted pursuant to,~~
17 21 ~~sections 501.411 through 501.418 are not exclusive of any~~
17 22 ~~other rights to which persons seeking indemnification or~~
17 23 ~~advancement of expenses are entitled under a provision in the~~
17 24 ~~articles of association or bylaws, agreements, vote of the~~
17 25 ~~members or disinterested directors, or otherwise, both as to~~
17 26 ~~action in a person's official capacity and as to action in~~
17 27 ~~another capacity while holding the office. However, such~~
17 28 ~~provisions, agreements, votes, or other actions shall not~~
17 29 ~~provide indemnification for a breach of a director's duty of~~
17 30 ~~loyalty to the cooperative or its interest holders, for acts~~
17 31 ~~or omissions not in good faith or which involve intentional~~
17 32 ~~misconduct or knowing violation of the law, or for a~~
17 33 ~~transaction from which the person seeking indemnification~~
17 34 ~~derives an improper personal benefit.~~

17 35 1. A cooperative may, by a provision in its articles of
18 1 organization or bylaws or in a resolution adopted or a
18 2 contract approved by its board of directors or members,
18 3 obligate itself in advance of the act or omission giving rise
18 4 to a proceeding to provide indemnification in accordance with
18 5 section 501.412 or advance funds to pay for or reimburse
18 6 expenses in accordance with section 501.414. Any such
18 7 obligatory provision shall be deemed to satisfy the
18 8 requirements for authorization referred to in section 501.414,
18 9 subsection 3, and in section 501.416, subsection 3. Any such
18 10 provision that obligates the cooperative to provide
18 11 indemnification to the fullest extent permitted by law shall
18 12 be deemed to obligate the cooperative to advance funds to pay
18 13 for or reimburse expenses in accordance with section 501.414
18 14 to the fullest extent permitted by law, unless the provision
18 15 specifically provides otherwise.

18 16 2. Any provision pursuant to subsection 1 shall not
18 17 obligate the cooperative to indemnify or advance expenses to a
18 18 director of a predecessor of the cooperative, pertaining to
18 19 conduct with respect to the predecessor, unless otherwise
18 20 specifically provided. Any provision for indemnification or
18 21 advance for expenses in the articles of organization, bylaws,
18 22 or a resolution of the board of directors or members of a
18 23 predecessor of the cooperative in a merger or in a contract to
18 24 which the predecessor is a party, existing at the time the
18 25 merger takes effect, shall be governed by section 501.618.

18 26 subsection 3.

18 27 3. A cooperative may, by a provision in its articles of
18 28 organization, limit any of the rights to indemnification or
18 29 advance for expenses created by or pursuant to this part.

18 30 4. This part does not limit a cooperative's power to pay
18 31 or reimburse expenses incurred by a director or an officer in
18 32 connection with the director's or officer's appearance as a
18 33 witness in a proceeding at a time when the director or officer
18 34 is not a party.

18 35 5. This part does not limit a cooperative's power to
19 1 indemnify, advance expenses to, or provide or maintain
19 2 insurance on behalf of an employee or agent.

19 3 Sec. 23. NEW SECTION. 501.420 EXCLUSIVITY.

19 4 A cooperative may provide indemnification or advance
19 5 expenses to a director or an officer only as permitted by this
19 6 chapter.

19 7 EXPLANATION

19 8 This bill applies changes made during the 2002 Legislative
19 9 Session to provisions regarding director and officer duties,
19 10 liability, and indemnification in Code chapter 490 to similar
19 11 provisions in Code chapter 491, which is the older corporation
19 12 law in Iowa under which Iowa mutual insurance companies and
19 13 mutual insurance holding companies are organized; Code chapter
19 14 496C, regarding professional corporations; Code chapters 497,
19 15 498, 499, and 501, regarding various types of cooperative
19 16 associations. The bill also makes related additional changes
19 17 to Code chapter 490, as well as amending the savings provision
19 18 in Code section 490.1703 with regard to the passage of the
19 19 2002 amendments to the Iowa business corporation Act.

19 20 LSB 1407SC 80

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